

SERVICE DATE – LATE RELEASE JULY 21, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34890

PYCO INDUSTRIES, INC.—FEEDER LINE APPLICATION—  
LINES OF SOUTH PLAINS SWITCHING, LTD. CO.

Decided: July 21, 2006

In a decision served on July 3, 2006 (July 3 decision), the Board accepted as complete the feeder line application of PYCO Industries, Inc. (PYCO), to purchase a portion of the lines of South Plains Switching, Ltd. Co. (SAW) and set a procedural schedule.<sup>1</sup> The decision was served on July 3, but by its terms did not take effect until its publication in the Federal Register on July 14, 2006. The July 3 decision provided that any competing applications would be due on July 18, 2006. The Board explained that it was shortening the procedural schedule from that provided in its regulation at 49 CFR 1151 because of the expiration on October 23, 2006, of alternative rail service to PYCO, which was authorized in PYCO Industries, Inc.—Alternative Rail Service—South Plains Switching, Ltd. Co., STB Finance Docket No. 34802 (STB served June 21, 2006).

On July 18, 2006, Keokuk Junction Railway Company (KJRY) asked for an extension of time until August 14, 2006, to file a competing application to purchase the entirety of SAW's rail lines. In a pleading filed on July 19, 2006, SAW supported KJRY's request. PYCO opposed the requested extension in a pleading filed on July 20, 2006.

BACKGROUND

In PYCO Industries, Inc.—Feeder Line Acquisition—South Plains Switching, Ltd. Co., STB Finance Docket No. 34844 (STB served June 2, 2006), the Director of the Office of Proceedings rejected PYCO's original feeder line application as incomplete. In the original application, PYCO had sought to purchase SAW's entire rail lines in Lubbock, TX ("All-SAW option"), or a portion of those lines called Alternative Two. The rejection was without prejudice to filing a new application.

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<sup>1</sup> The portion of SAW's lines proposed to be acquired (called "Alternative Two") is needed to serve PYCO itself and two other shippers whose plants are in close proximity to one of PYCO's plants at Lubbock and is described in the July 3 decision, slip op. at 1. The feeder line provision is codified at 49 U.S.C. 10907 and the implementing regulations are at 49 CFR part 1151.

PYCO appealed the Director's decision and also filed a new feeder line application for Alternative Two. In the July 3 decision, the Board denied the appeal and accepted the new application as complete.

### DISCUSSION AND CONCLUSIONS

PYCO opposes KJRY's requested extension of time, calling it a "ruse to create delay." PYCO also argues that, in effect, KJRY seeks reconsideration of the Board's denial of PYCO's earlier appeal of the finding that PYCO's application for the All-SAW option was not complete. In that regard, PYCO contends that KJRY has not met the criteria for granting reconsideration.

The request for additional time to file a feeder line application for the entirety of SAW's lines is not the same as a request for reconsideration. PYCO's earlier application for the All-SAW option was found to be incomplete because PYCO did not provide sufficient evidence that the rail service provided by SAW was inadequate for a majority of the shippers on SAW's lines. KJRY should have the opportunity to meet the burden of producing sufficient evidence on this issue.

The regulation provides that usually there would be 30 days from publication of the acceptance of a feeder line application for the filing of competing applications. 49 CFR 1151.2(c)(1). The need for expedition led the Board to allow a shorter time for competing applications in this case, 15 days from issuance and only 4 days from publication of the acceptance of PYCO's new application in the Federal Register. Because a feeder line application involves the use of experts to value real estate, track, and the like, it can be difficult to provide an application in a short time. Accordingly, KJRY will be afforded an additional 14 days from the service date of this decision to file a competing application. This should allow sufficient time for KJRY to provide an application without jeopardizing the goal of reaching a final decision on the feeder line applications prior to the expiration of the alternative service authorization on October 23, 2006.

#### It is ordered:

1. KJRY's request for an extension of time to file a competing feeder line application is granted in part and KJRY shall have until August 4, 2006, to file a competing application.

2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary